

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

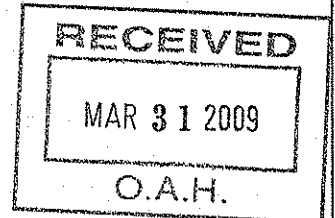
No. 09-BD061-BNK

3 **SMART MORTGAGE, LLC DBA SMART**
4 **MORTGAGE AND CATHERINE**
5 **ZEBARTH, PRESIDENT/RESPONSIBLE**
6 **INDIVIDUAL**

8277 East San Salvador Drive
Scottsdale, Arizona 85258

**ORDER OF SUMMARY SUSPENSION
AND NOTICE OF HEARING**

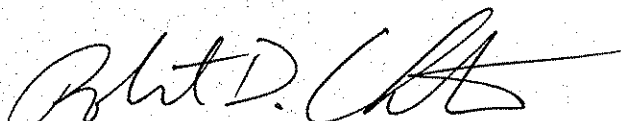
Respondents.



8 The Arizona Department of Financial Institutions (the "Department") hereby finds that Smart
9 Mortgage, LLC dba Smart Mortgage and Catherine Zebarth, President and Responsible Individual
10 ("Respondents") have violated the provisions of the Arizona Revised Statutes ("A.R.S."), Title 6 as
11 set forth below and finds that the public health, safety and welfare require emergency action
12 pursuant to A.R.S. §§ 6-905 and 41-1092.11(B).

13 **THEREFORE, IT IS ORDERED** to summarily suspend the Arizona mortgage broker
14 license held by Respondents, effective immediately, pending the proceedings for revocation or other
15 action commenced this date. **This suspension is effective immediately.**

16 EFFECTIVE this 31st day of March, 2009.

17
18 
19 Robert D. Charlton
20 Assistant Superintendent of Financial Institutions

21 NOTICE OF HEARING AND COMPLAINT

22 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138,
23 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative
24 Hearings, an independent agency, and is scheduled for May 7, 2009, at 9:00 a.m., at the Office of
25 Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the
26 "Hearing").

1 The purpose of the Hearing is: (1) to determine whether grounds exist to suspend or revoke
2 Respondents' mortgage broker license; (2) to order any other remedy necessary or proper for the
3 enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-
4 123 and 6-131; and (3) to impose a civil money penalty pursuant to A.R.S. § 6-132.

5 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
6 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
7 or expressed, to the Director of the Office of Administrative Hearings or the director's designee to
8 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
9 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
10 of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed
11 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
12 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
13 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
14 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
15 Judge is specifically prohibited from entering.

16 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
17 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
18 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
19 Administrative Hearings.

20 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
21 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity
22 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses
23 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to
24 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),
25 any person may appear on his or her own behalf or by counsel.

26 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be

1 made by a court reporter or by electronic means. Any party that requests a transcript of the
2 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

3 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
4 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona
5 85007.

6 **NOTICE OF APPLICABLE RULES**

7 The hearing will be conducted pursuant to A.A.C. R20-4-1201 through R20-4-1220 and the
8 rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
9 R2-19-122. A copy of these rules is enclosed.

10 Pursuant to A.A.C. R20-4-1209, Respondents shall file a written answer **within twenty (20)**
11 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondents'
12 position or defense and shall specifically admit or deny each of the assertions contained in this
13 Notice of Hearing. If the answering Respondents are without or are unable to reasonably obtain
14 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondents shall
15 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
16 When Respondents intend to deny only a part or a qualification of an assertion, or to qualify an
17 assertion, Respondents shall expressly admit so much of it as is true and shall deny the remainder.
18 Any defense not raised in the answer is deemed waived.

19 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondents will be**
20 **deemed in default** and the Superintendent may deem the findings in this Notice of Hearing as true
21 and admitted and the Superintendent may take whatever action is appropriate, including (1)
22 suspension or revocation of Respondents' license; (2) any other remedy necessary or proper for the
23 enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-
24 123 and 6-131; and (3) imposing a civil money penalty pursuant to A.R.S. § 6-132.

25 Respondents' answer shall be mailed or delivered to the Arizona Department of Financial
26 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or

1 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
2 Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection &
3 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

4 **Persons with disabilities may request reasonable accommodations such as interpreters,**
5 **alternative formats, or assistance with physical accessibility.** Requests for special
6 accommodations must be made as early as possible to allow time to arrange the accommodations. If
7 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

8 FINDINGS

9 1. Respondent Smart Mortgage, LLC dba Smart Mortgage ("Smart Mortgage") is an
10 Arizona limited liability company authorized to transact business in Arizona as a mortgage broker,
11 license number MB 0905498, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Smart
12 Mortgage's business is that of making, negotiating, or offering to make or negotiate loans secured by
13 Arizona real property, within the meaning of A.R.S. § 6-901(6).

14 2. Respondent Catherine Zebarth ("Ms. Zebarth") is the President, Responsible
15 Individual and forty five percent (45%) owner of Smart Mortgage. Ms. Zebarth is authorized to
16 transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(E).

17 3. Smart Mortgage's principal place of business is located at 8277 East San Salvador
18 Drive, Scottsdale, Arizona 85258.

19 4. On or about September 24, 2008, the Department learned that an Indictment had been
20 filed against Ms. Zebarth in June 2008 by the Federal Grand Jury for the District of Arizona
21 regarding a "cash back" scheme that included wire fraud, conspiracy to commit wire fraud,
22 transactional money laundering, and conspiracy to commit money laundering involving Ms. Zebarth
23 and others.

24 5. The Department received a Certified Copy of the Indictment *U.S. v. Daniel Morar, et*
25 *al.*, No. CR 08-0612-PHX-NVW-8, filed on June 18, 2008, in the United States District Court,
26 District of Arizona, charging Ms. Zebarth with six (6) counts of Wire Fraud, one (1) count of

1 Conspiracy, ten (10) counts of Money Laundering, one (1) count of Conspiracy to Commit Money
2 Laundering, and eighteen (18) counts of Aiding and Abetting.

3 6. The conduct described above constitutes an immediate threat to the public health,
4 safety, and welfare warranting immediate suspension of Respondents' mortgage broker license.

5 7. The conduct described above constitutes grounds for the suspension of Respondents'
6 mortgage broker license.

7 LAW

8 1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to
9 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
10 rules, and regulations relating to mortgage brokers.

11 2. Ms. Zebarth has been charged with six (6) counts of Wire Fraud, one (1) count of
12 Conspiracy, ten (10) counts of Money Laundering, one (1) count of Conspiracy to Commit Money
13 Laundering, and eighteen (18) counts of Aiding and Abetting, and a Certified Copy of the
14 Indictment has been filed with the Superintendent, which is grounds for suspension of Respondents'
15 mortgage broker license, pursuant to A.R.S. § 6-905(B) and (C), pending trial of the criminal
16 charges currently filed against Ms. Zebarth in the United States District Court, District of Arizona.

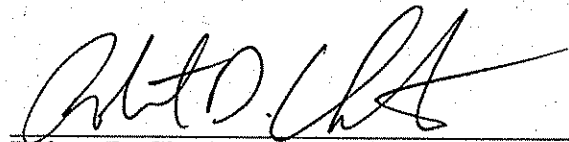
17 3. Pursuant to A.R.S. §§ 6-905(B) and (C) and 41-1092.11(B), the conduct described
18 above constitutes an immediate threat to the public health, safety and welfare warranting immediate
19 suspension of Respondents' mortgage broker license.

20 4. The violations, set forth above, constitute grounds for the pursuit of any other remedy
21 necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona
22 pursuant to A.R.S. §§ 6-123 and 6-131.

23 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
24 above described violations or other grounds for disciplinary action, the Superintendent may: (1)
25 suspend or revoke Respondents' mortgage broker license pursuant to A.R.S. § 6-905; (2) order any
26 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage

1 brokers in Arizona under A.R.S. §§ 6-123 and 6-131; and (3) impose a civil money penalty pursuant
2 to A.R.S. § 6-132.

3 DATED this 31st day of March, 2009.

4
5 

6 Robert D. Charlton
7 Assistant Superintendent of Financial Institutions
8

9 ORIGINAL of the foregoing filed this 31st
10 day of March, 2009, in the office of:

11 Felecia Rotellini
12 Superintendent of Financial Institutions
13 Arizona Department of Financial Institutions
14 ATTN: Susan Longo
15 2910 N. 44th Street, Suite 310
16 Phoenix, AZ 85018

17 COPY mailed/delivered same date to:

18 Lewis D. Kowal, Administrative Law Judge
19 Office of the Administrative Hearings
20 1400 West Washington, Suite 101
21 Phoenix, AZ 85007

22 Erin O. Gallagher, Assistant Attorney General
23 Attorney General's Office
24 1275 West Washington
25 Phoenix, AZ 85007

26 Richard Fergus, Licensing Manager
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Robert D. Charlton, Assistant Superintendent
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

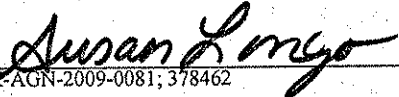
1 AND COPY MAILED SAME DATE, by
2 Certified Mail, Return Receipt Requested to:

3 Catherine Zebarth, President
4 Smart Mortgage, LLC dba Smart Mortgage
5 8277 E. San Salvador Dr.
6 Scottsdale, AZ 85258
7 Respondents

8 Catherine Zebarth, President
9 Smart Mortgage, LLC dba Smart Mortgage
10 6773 N. 79th Pl.
11 Scottsdale, AZ 85250
12 Respondents

13 Catherine Zebarth, CEO
14 Smart Mortgage, LLC dba Smart Mortgage
15 1515 N. Nebraska St.
16 Chandler, AZ 85225
17 Respondents

18 Yo Yi Ni, Statutory Agent for:
19 Smart Mortgage, LLC dba Smart Mortgage
20 1515 N. Nebraska St.
21 Chandler, AZ 85225

22 
23 PHX-AGN-2009-0081; 378462